

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 149 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KALUBHAI CHHAGANBHAI

Versus

STATE OF GUJARAT

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Appearance:

MS KD PARMAR for Petitioner

Mr.MR ANAND, P.P. with Mr.N.D.Gohil, A.P.P. for  
Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/02/97

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.M.R.Anand,  
learned P.P. with Mr.N.D.Gohil, learned A.P.P. for the  
Respondents.

2. This Special Criminal Application arises on  
account of the fact that the petitioner's application for  
furlough moved on 21st November 1996 has yet not been

decided. It is the case of the petitioner that he was sentenced to imprisonment for life upon his conviction under section 302 I.P.C. by the learned Additional Sessions Judge, Surendranagar as per the Judgment and order dated 24.11.1994. His criminal Appeal is pending for final disposal before this Court. He has, however, been in jail since 8.7.1992.

3. The first grievance made on behalf of the respondents is that the petitioner, having not undergone sentence for a minimum period of seven years, would not be entitled to the furlough being granted. Reference in this connection has been made to second proviso to Rule : 3 of The Prison (Bombay Furlough & Parole) Rules, 1959. The proviso would read as under :

Provided further that a prisoner sentenced to life imprisonment may be released on furlough every year instead of every two years after he completes seven years' actual imprisonment."

In reply it has been submitted on behalf of the petitioner that all prisoners would be entitled to furlough (except where there is statutory prohibition in respect of grant of furlough) and they are being granted furlough as per such entitlement flowing from the main provision contained in Rule : 3. For that purpose the main provision contained in Sub Rule : 1 & 2 of Rule : 3 has been read. The same might be reproduced :

(1) A prisoner, who is sentenced to imprisonment for a period exceeding one year but not exceeding five years, may be released on furlough for a period of two weeks at a time for every year of actual imprisonment undergone.

(2) A prisoner, who is sentenced to imprisonment for a period exceeding five years may be released on furlough for a period of two weeks at a time for every two years of actual imprisonment undergone.

4. The argument of the learned Advocate for the petitioner might well be appreciated by reproducing even the first proviso which would read as under :

Provided that a prisoner sentenced to imprisonment for more than five years but not to imprisonment for life may be released on furlough every year instead of every two years during the last five years of his unexpired period of sentence."

5. It may be noticed from the plain reading of the operative portion of the Rule as contained in sub-rules 1 & 2 that all prisoners would be entitled to furlough as indicated in Sub-rule 1 & 2. Sub Rule 1 speaks about entitlement of furlough to a prisoner who has been sentenced to imprisonment for a period exceeding one year, but not exceeding five years and such entitlement is for every year of actual imprisonment undergone. Sub Rule 2 speaks about entitlement of furlough in so far as prisoner who has been sentenced to imprisonment for a period exceeding five years is concerned and such entitlement is for every two years of actual imprisonment undergone. What the first proviso indicates is that a prisoner sentenced to imprisonment for more than five years, but not imprisonment for life would be entitled to furlough every year instead of every two years during the last five years of his unexpired period of sentence. Likewise the second proviso speaks about a prisoner sentenced to life imprisonment being entitled to furlough every two years as stated in the main provision, but he would be entitled to furlough every year after completion of seven years of actual imprisonment. Thus, the submission made on behalf of the respondents that a prisoner sentenced to life imprisonment would not be entitled to furlough until he has actually undergone seven years of actual imprisonment does not fit in the provision of Rule : 3 read with the proviso as a whole.

6. In view of what is stated above the submissions made on behalf of the respondent cannot be accepted.

7. It is an admitted position that the petitioner's application for furlough has yet not been decided by the concerned Authority. In that view of the matter the factual aspect with regard to whether the petitioner can be granted furlough or not is not required to be dealt with in this application. Appropriate direction has to be issued to the concerned Authority to decide the application.

8. In the result this Special Criminal Application is partly allowed. The petitioner's pending application for furlough (stated to have been moved on 21.11.1996) shall be decided in accordance with law within a period of two weeks from the date of receipt of writ of this direction. Rest of the prayer is not entertained at this stage.

Rule made absolute in the aforesaid terms.

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